

JOHN H. TRIGG

IBLA 83-567

Decided June 28, 1983

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting in part application to convert oil and gas lease, U 17462, to combined hydrocarbon lease.

Dismissed.

1. Practice Before the Department: Persons Qualified to Practice

An appeal brought on behalf of another by a person who does not qualify under 43 CFR 1.3 to practice before the Department is subject to dismissal.

APPEARANCES: Kent H. Hatfield, Salt Lake City, Utah, on behalf of John H. Trigg.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

John H. Trigg filed a letter on January 25, 1982, with the Utah State Office, Bureau of Land Management (BLM), proposing to convert his oil and gas lease, U 17462, to a combined hydrocarbon lease and later submitted a plan of operation for conversion which included all the land within the lease. In a decision dated February 2, 1983, BLM rejected the conversion application for 2,416.22 acres and declared the remaining land, 152.23 acres, eligible for conversion.

On April 25, 1983, Kent E. Hatfield attempted to file on behalf of John H. Trigg an appeal which was dated April 21, 1983. Hatfield is identified as an officer of Kent E. Hatfield, Inc., an engineering and contracting firm. However, the combined notice of appeal and statement of reasons was addressed to and received by the Office of the Mining Supervisor, Central Region, BLM. That office forwarded the appeal to the Utah State Office, BLM.

[1] Hatfield's representation of Trigg in this appeal is violative of 43 CFR 1.3, which defines who may practice before the Department. Hatfield has made no showing that he is qualified under this regulation. The Board has repeatedly held that an appeal filed for an appellant by a representative or attorney-in-fact who is not qualified to practice before the Department under the provisions of 43 CFR 1.3 is subject to summary dismissal. Thomas L. Tuttle, 71 IBLA 265 (1983); Verne G. Long, 57 IBLA 263 (1981); Allen Duncan, 53 IBLA 101 (1981); United States v. Gayanich, 36 IBLA 111 (1978), and cases cited therein. This limitation on persons practicing before the Department

is a recognized condition pursuant to statutory authority. See 43 U.S.C. § 1464 (1976); Allen Duncan, supra. The purpose is not to penalize appellants, but rather to protect them against the risk of inadequate representation by persons untrained in the law.

Hatfield's submission of the appeal to the Office of the Mining Supervisor also contravenes both the regulations and BLM's instructions. In its decision, BLM informed Trigg of the following appeal procedures:

Right of appeal to the Board of Land Appeals, Office of the Secretary, is allowed in accordance with the regulations in 43 CFR Part 4, Subpart E. If an appeal is taken, it must be filed with the Utah State Office, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111, so that the case file can be transmitted to the Board. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

Besides BLM's clear explanation as to filing the appeal, 43 CFR 4.411(a) provides that a person desiring to appeal to this Board must file a notice of appeal in the office of the officer who made the decision appealed from. The Chief of the Minerals Section, Utah State Office, BLM, was the deciding officer and the Utah State Office, as clarified in the decision, was the proper place for the appeal to be filed.

Moreover, it appears that the appeal was not timely filed within the allotted 30 days from service of the decision. See 43 CFR 4.411(a). Failure to file an appeal within the time allowed requires dismissal of the appeal. State of Alaska, 70 IBLA 369 (1983); Harold H. Ruppert, 69 IBLA 82 (1982). However, the record lacks the certified mail return receipt pertaining to transmittal of the decision letter and we can only speculate as to whether the appeal was timely filed or not. We therefore merely note this in order that the parties concerned may be aware of the probability of untimely filing.

Finally, there was a failure to serve the Regional or Field Solicitor with a copy of the appeal, as required by 43 CFR 4.413.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Edward W. Stuebing
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

